

***United States Court of Appeals
for the Second Circuit***



MEMORANDUM

74-2233

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 74-2233

In the Matter of

CONTINENTAL VENDING MACHINE CORP. and
CONTINENTAL APCO, INC.,

Debtors.

JAMES TALCOTT, INC.,

Appellant,

v.

IRVING L. WHARTON, as Trustee,

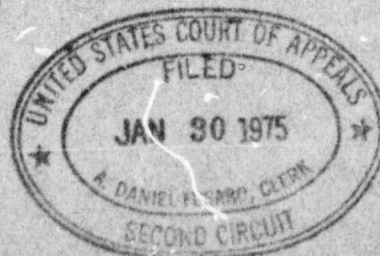
Appellee.

Appeal from the United States District Court for
Eastern District of New York

MEMORANDUM OF THE SECURITIES AND EXCHANGE COMMISSION, APPELLEE

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The Securities and Exchange Commission, a statutory party to the
reorganization of these debtors under Chapter X of the Bankruptcy Act, ^{*/}

^{*/} As a party in the district court, the Commission is a party to this appeal. See, e.g., In re Imperial '400' National, Inc., 432 F. 2d 232, 234 (C.A. 3, 1970); In re American National Trust, 426 F. 2d 1059, 1066 (C.A. 7, 1970); Ashbach v. Kirtley, 289 F. 2d 159, 162 (C.A. 8, 1961).

agrees with the position taken in the trustee's brief that to reach an equitable result a Chapter X court may pierce the corporate veil in some situations without doing so in others. Here, as made clear by the trustee's brief, the corporate lines between Continental Vending Machine Corp. and Continental Apco, Inc., are being disregarded with respect to unsecured creditors because this is required for a fair result--that is, it appears that it may be impossible to ascertain which of the unsecured claims are proper against which debtor, and that, in any event, to attempt to do so would involve such substantial expense that it is unlikely that any of the unsecured creditors would ultimately be benefited. The fact that, for these reasons, the corporate lines are disregarded with respect to the claims of unsecured creditors is no justification for a secured creditor receiving more security than he bargained for, particularly when there has been no showing that he has been harmed by transactions in disregard of the existence of the corporate entities.

Respectfully submitted,

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January 1975.